

Section 9

VIOLATIONS AND SANCTIONS

Violations and Sanctions

Federal statutes and regulations and Arizona Department of Health Services policies and procedures require sanctioning contracted WIC Vendors determined to be violating WIC program federal regulations, state statutes, the WIC Vendor Contract, the Vendor Manual and WIC program policies and procedures. The Department may sanction Vendors violating program requirements by imposing administrative fines, monetary claims, civil money penalties, suspensions, terminations or disqualifications from the WIC program, or any combination of sanctions. Vendor violations may be intentional or unintentional. The Department may refer Vendors who commit fraud and/or abuse of the WIC program to federal, state or local authorities for prosecution under applicable statutes.

The Department may sanction Vendors for a combination of violations or any violations of the terms of the Vendor contract, federal or state statutes or regulations, WIC Program policies and procedures and/or other applicable statutes, rules or regulations.

The imposition of sanctions shall not be construed as excluding or replacing any other criminal or civil sanction, penalty, or remedy applicable under any federal, state or local statutes.

Vendor violations and/or sanctions in preceding contract periods may impact Vendor qualifications for authorization in subsequent contract periods. Also, violations of the WIC Program which occurred during the previous contract period may be carried over and used as a basis for administrative fines, civil money penalties, monetary claims, termination, disqualification, criminal prosecution, denial of an application for a WIC Vendor contract or other sanctions, or any combination of sanctions, under any subsequent contracts in accordance with WIC Program Policies and Procedures.

All references in this document to participants include WIC participants, parents or caretakers of infant and child participants, or proxies. All references to days or years in this document refer to calendar days or calendar years.

The Department has two levels of violations: those that result in Department sanctions and those that result in federally mandated sanctions.

Department Sanctions - Administrative and Procedural Violations

Under this section Vendors are subject to administrative fines and/or termination and disqualification, and any combination of sanctions. Vendors who fail to pay a fine as required will be terminated and disqualified for one year.

A violation under Section A will remain on the Vendor's record for sanction purposes for 12 calendar months from the date of that violation. If the Department is able to determine that the Vendor has complied after being sanctioned for a violation in Section A, then any subsequent incidence of that violation will be considered an initial incidence of that violation.

If the Department determines that disqualification of a Vendor would result in inadequate participant access, a civil money penalty will be imposed. (See Civil Money Penalty in this section for calculation.)

THE FIRST INCIDENCE OF ANY VIOLATIONS 1 - 17 LISTED BELOW WILL RESULT IN A WARNING LETTER. ADDITIONAL INCIDENCES WILL RESULT IN ADMINISTRATIVE FINES OR TERMINATION AND DISQUALIFICATION FROM THE WIC PROGRAM.

Violation	Second Incidence	Third Incidence	Fourth Incidence
1. Accept a food instrument, which is outside valid dates, post dated or missing a signature.	\$100.00	\$200.00	Termination of Contract and one year disqualification.
2. Failure to verify signature on ID folder or proxy form against signature on food instrument.	\$100.00	\$200.00	Termination of Contract and one year disqualification.
3. Failure to offer program participants the same courtesies offered to other customers.	\$100.00	\$200.00	Termination of Contract and one year disqualification.
4. Require identification other than the WIC ID folder or proxy form to use WIC food instrument(s).	\$100.00	\$200.00	Termination of Contract and one year disqualification.
5. Failure to allow WIC participants to use coupons or other promotional specials (does not apply to infant formula purchases).	\$100.00	\$200.00	Termination of Contract and one year disqualification.
6. Failure to record the total actual price on the WIC food instrument before obtaining the WIC participant's signature on the food instrument.	\$100.00	\$200.00	Termination of Contract and one year disqualification.
7. Failure to display the current price of an authorized WIC food item on the item, shelf or nearby sign.	\$100.00	\$200.00	Termination of Contract and one year disqualification.
8. Require other cash purchases as a condition to use WIC food instruments.	\$100.00	\$200.00	Termination of Contract and one year disqualification.
9. Approach, solicit or leave advertisements or other promotional items for WIC applicants or participants at the WIC State agency or local agency WIC clinics.	\$100.00	\$200.00	Termination of Contract and one year disqualification.

Violation	Second Incidence	Third Incidence	Fourth Incidence
10. Failure to maintain required minimum stock.	\$200.00	\$400.00	Termination of Contract and one year disqualification.
11. Collect sales tax on a WIC food purchase.	\$200.00	\$400.00	Termination of Contract and one year disqualification.
12. Allow the return of food items purchased with WIC food instruments in exchange for food items not authorized by the WIC program or for WIC food items not listed on the WIC participants' food instruments.	\$200.00	\$400.00	Termination of Contract and one year disqualification.
13. Contact WIC participants to attempt to collect funds that will not be or were not paid to the Vendor by the WIC program.	\$200.00	\$400.00	Termination of Contract and one year disqualification.
14. Charging WIC participants for authorized WIC foods obtained with WIC food instruments.	\$200.00	\$400.00	Termination of Contract and one year disqualification.
15. Failure to submit a WIC Vendor Price/Stock Report as required.	\$200.00	\$400.00	Termination of Contract and one year disqualification.
16. Use of the WIC logo or the acronym "WIC" without written approval from the Department and the USDA.	\$500.00	\$1000.00	Termination of Contract and one year disqualification.
17. *Provide incentive items** or other free merchandise to WIC program participants.	\$500.00	\$1000.00	Termination of Contract and one year disqualification.

***Note:** This violation only applies to for-profit Vendors for which more than 50 percent of the annual revenue of the Vendor from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with WIC food instruments.

****Incentive items or other free merchandise are defined as:** Free or reduced price food or other items, cash, lottery tickets, buy one, get one free, buy one, get one at a reduced price, free amounts added to an item by a manufacturer, manufacturer coupons, store loyalty cards, sales and specials for supplemental food, free or reduced price services except for the minimal customary courtesies of the retail food trade, such as bagging supplemental food for the participant and assisting the participant with loading the supplemental food into his/her vehicle.

Department Sanctions – Fraud and Abuse

The Department will immediately impose the sanction indicated for one incidence of the violations listed in this section. The Department will not provide prior warning that violations were occurring before imposing these sanctions.

If the Department determines that disqualification of the Vendor would result in inadequate participant access for violations 1 through 16 listed below in this section, a civil money penalty will be imposed in lieu of disqualification. (See Civil Money Penalty in this section for calculation.)

Violation	Sanction
1. Failure to attend training as required by the Department.	Termination of Contract and six month disqualification.
2. Failure to provide access to Vendor premises and/or in any manner hinder or impede authorized WIC personnel in the act of conducting an on-site education, monitoring, inventory audit or investigation visit.	Termination of Contract and six month disqualification.
3. Providing false or misleading information on the WIC Vendor Price/Stock Reports.	Termination of Contract and one year disqualification.
4. Threaten or verbally or physically abuse WIC participants.	Termination of Contract and one year disqualification.
5. Threaten or verbally or physically abuse WIC program personnel in the conduct of official WIC program business.	Termination of Contract and one year disqualification.
6. Make a false or misleading statement on a WIC Vendor application, contract or amendment.	Termination of Contract and one year disqualification.
7. Existence of a conflict of interest between the Vendor and the Department or a local agency as defined by State or Federal statutes, regulations, rules or Department policies and procedures.	Termination of Contract and one year disqualification.
8. Suspension, revocation, denial or failure to maintain a Health Code Permit or other licenses, permits or certifications to operate a food store in the State of Arizona.	Termination of Contract and one year disqualification.
9. Assessment of a civil money penalty for hardship in the Food Stamp Program.	Termination of Contract and disqualification for the period of time for which the Vendor would otherwise have been disqualified by the Food Stamp Program.
10. Mandatory sanction by another WIC State agency.	Termination of Contract and disqualification from the Arizona WIC Program for the length of time as the disqualification assessed by the other State agency.
11. Failure to maintain inventory records or other records the Department requires in the Vendor Contract for a period of five years.	Termination of Contract and one year disqualification.

Violation	Sanction
12. Failure to make available to the Department, the States Department of Agriculture, any law enforcement agency, Department of the Attorney General, or the Comptroller General of the United States, upon request, at a reasonable time and place for inspection and audit, all food instruments in the Vendor's possession and all program related records. (This includes failure to provide the Department legible copies, within 30 calendar days of the written request, all required program related records including purchase and inventory records for WIC authorized foods).	Termination of Contract and one year disqualification.
13. Allow the return of food purchased with WIC food instruments in exchange for cash, credit or non-food items.	Termination of Contract and one year disqualification.
14. Criminal conviction or civil judgment entered within the last six years against any of the owners, officers, partners or managers for any activity indicating a lack of business integrity. (Activities indicating a lack of business integrity include, but are not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification of or destruction of records, making false statements, receiving stolen property, making false claims and obstruction of justice).	Termination of Contract and one year disqualification.
15. Discriminate on the basis of race, color, disability (handicap), age, national origin or gender (sex).	Termination of Contract and one year disqualification.
16. Purchase infant formula from a source that is not listed on the Arizona WIC Program's list of infant formula manufacturers, wholesalers or distributors.	Termination of Contract and one year disqualification.

Mandatory Sanctions under Federal Regulations

Federal Regulations at 7 C.F.R. § 246.12 require mandatory sanctions be imposed for violations listed in this section and also require that a pattern of incidences of a violation be established before imposing a mandatory sanction for violations numbered 4, 5, 6, 7, 8 and 9 listed below.

The Department will send the Vendor a single warning letter after the first incidence of a violation for violations numbered 4, 5, 6, 7 and 8 listed below. Additional compliance buys may be conducted after the warning letter is sent. The Department will not send any additional warning letters for subsequent incidences of violations numbered 4, 5, 6, 7 and 8 listed below prior to imposing the mandatory sanction. (No warning letters will be sent for violation number 9 and 10).

If the Department determines that disqualification of the Vendor would result in inadequate participant access, a civil money penalty may be imposed in lieu of disqualification for the violations numbered 2, 3, 4, 5, 6, 7, 8, 9 and 10 listed below. (See Civil Money Penalty for calculation.)

Violation	Number of Incidences of the Violation Which will Result in the Indicated Sanction	Sanction and Length of Disqualification
1. Vendors <u>convicted</u> of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)) in exchange for food instruments.	One	Termination of Contract and permanent disqualification.
2. a. Buying or selling food instruments for cash (trafficking); or b. Selling firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C. § 802) in exchange for food instruments.	One	Termination of Contract and six year disqualification.
3. The sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments.	One	Termination of Contract and three year disqualification.
4. Charging the WIC program more for supplemental food than non-WIC customers or charging the WIC program more than the current shelf price.	Three	Termination of Contract and three year disqualification.
5. Charging the WIC program for supplemental food not received by the participant.	Three	Termination of Contract and three year disqualification.
6. Receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized Vendor and/or an unauthorized person.	Three	Termination of Contract and three year disqualification.

Violation	Number of Incidences of the Violation Which will Result in the Indicated Sanction	Sanction and Length of Disqualification
7. Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C. § 802), in exchange for food instruments.	Three	Termination of Contract and three year disqualification.
8. Providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.	Three	Termination of Contract and one year disqualification.
9. Claiming reimbursement for the sale of an amount of a specific supplemental food item, which exceeds the stores documented inventory of that supplemental food item for a specific period of time. Each month that a Vendor claimed reimbursement for the sale of a specific supplemental food item, which exceeded the Vendor's documented inventory of that supplemental food item, shall constitute an incidence of a violation. Three incidences of this violation will result in termination of the Contract and a three-year disqualification.		
10. Vendors who have been disqualified from the Food Stamp Program shall be disqualified from the WIC Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification and may begin at a later date than the Food Stamp Program disqualification. The disqualification is not subject to administrative or judicial review under the WIC Program.		

Multiple Violations During a Single Investigation

When during the course of a single investigation the Department determines a Vendor has committed multiple violations (which may include violations subject to Department sanctions or federally mandated sanctions) the Department shall disqualify the Vendor for the period corresponding to the most serious sanction.

Civil Money Penalty

If the Department determines that disqualification of a Vendor would result in inadequate participant access, a civil money penalty will be imposed. The civil money penalty amount shall be determined by using the formula in USDA Federal Regulations at 7 C.F.R. § 246.12 (l) (1) (x). The formula is as follows:

Step I: Multiply 10% (.10) times the average monthly redemptions for the previous six calendar month period ending with the month preceding the month during which the notification of violation is dated.

Step II: Multiply the product of Step I by the number of months of the disqualification period.

The result of Step II will be the civil money penalty imposed. A civil money penalty shall not exceed \$10,000 for each violation.

When during the course of a single investigation, the Department determines a Vendor has committed multiple violations, the Department must impose a civil money penalty for each violation.

The total amount of civil money penalties for violations investigated as part of a single investigation shall not exceed \$40,000.

A civil money penalty shall not be imposed in lieu of disqualification for third or subsequent sanctions for violations listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, 9, and 10.

Vendors that have been convicted of trafficking (Mandatory Sanctions Under Federal Regulations - Item 1) in food instruments or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments will be permanently disqualified from the WIC program. A civil money penalty in lieu of disqualification will not be considered even if disqualification of the Vendor would result in inadequate participant access or if the Vendor had at the time of the violation an effective policy and program in effect to prevent trafficking and the ownership of the Vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

If a Vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the Department must disqualify the Vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most severe violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

Second Mandatory Sanction

A Vendor who previously has been assessed a sanction for any of the violations listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, and 9 and received another sanction for any of these violations, the second sanction will be doubled.

Third or Subsequent Mandatory Sanction

A Vendor who previously has been assessed two or more sanctions for any of the violations listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, and 9 and receives another sanction for any of these violations, the third sanction and all subsequent sanctions will be doubled.

No Voluntary Withdrawal or Nonrenewal of Contract

The Department shall not accept voluntary withdrawal of the Vendor from the WIC program as an alternative to disqualification for the violations requiring a mandatory sanction under federal regulations listed in Mandatory Sanctions under Federal Regulations. In addition, the Department shall not use nonrenewal of the Vendor Contract as an alternative to disqualification for the sanctions listed in the Mandatory Sanctions under Federal Regulations section of this Sanction Policy.

Criminal or Civil Prosecution

A Vendor who commits fraud or abuse in the WIC program is liable to prosecution under applicable federal, state or local laws. Under federal law, those who have willfully misapplied, stolen, or fraudulently obtained program funds will be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment of not more than one year or both.

Change of Business Entity

If a Vendor changes ownership at the same location through a change in business entity or the addition or deletion of partners, associates or principals, then any violations, which occurred under the previous contract will carry over to the new contract and may be used as a basis for termination and/or disqualification action or other sanctions. Such changes in ownership may include, but are not limited to, a change from a sole proprietorship or partnership to a corporation where the previous individual owner(s) or one or more partner(s) remain as an officer or shareholder of the new corporation.

Termination/Denial/Disqualification

Vendors may appeal denial of authorization, an administrative fine, termination, disqualification, or a civil money penalty according to the most recent administrative hearing procedures issued by the Department. However, a termination and disqualification, which is based on a Food Stamp Program disqualification **is not subject to administrative or judicial review.**

For those cases where a Vendor has timely appealed a termination or termination and disqualification action, and the Vendor was allowed to continue on the program, all provisions of the WIC Vendor Contract will continue to apply, including sanctions for noncompliance, during the time period the contract is in effect.

Vendors who are terminated and disqualified may apply for a WIC Vendor contract after the disqualification period ends. The Vendor must meet all current requirements for a WIC Vendor contract including the selection plan and limitation policy requirements. The Department will not consider contracting with a Vendor during any disqualification period from the WIC program.

Food Stamp Disqualification

Disqualification from the WIC program for any of the sanctions listed in the Mandatory Sanctions under Federal Regulations section of this Sanction Policy may result in disqualification as a retailer in the Food Stamp Program. Such disqualification is not subject to administrative or judicial review under the Food Stamp Program.